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HOUSE BILL 1136

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State of Washington                      60th Legislature                      2007 Regular Session

By Representatives Takko, Springer, Kelley, Blake, Moeller, Appleton, Dickerson, Strow, Hasegawa, Chase and Haler

Read first time 01/11/2007. Referred to Committee on Finance.

1            AN ACT Relating to excise tax relief for proceeds lost due to  
2 theft; adding a new section to chapter 82.04 RCW; adding a new section  
3 to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW;  
4 providing an effective date; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 82.04 RCW  
7 to read as follows:

8            (1) In computing tax there may be deducted from the measure of tax  
9 imposed on the business of making retail or wholesale sales the amount  
10 of any proceeds from a retail or wholesale sale that have been lost due  
11 to theft. The deduction is allowed only if the theft was by a person  
12 other than the seller, an immediate family or household member of the  
13 seller, an employee of the seller, or a person having a business or  
14 contractual relationship with the seller at the time of the theft. The  
15 maximum deduction allowable is five thousand dollars per theft.

16            (2) A deduction is allowed under this section only to the extent  
17 the loss is not covered by insurance or otherwise recovered. Proceeds  
18 subsequently recovered in whole or in part must be reported as gross  
19 proceeds of sales for the return filed for the period in which the

1 recovery is made, but only if the seller incurred a tax liability under  
2 this chapter on the return for the period in which the theft occurred  
3 or would have incurred a tax liability under this chapter for the  
4 period in which the theft occurred absent the deduction under this  
5 section.

6 (3) A seller must report the theft to the appropriate law  
7 enforcement agency and obtain a copy of such report, which shall be  
8 retained as supporting documentation for the deduction. The department  
9 may require additional information or documentation from the seller as  
10 it determines necessary in order to verify the seller's right to a  
11 deduction under this section.

12 (4) The deduction claimed under this section shall not exceed the  
13 amount of proceeds of retail or wholesale sales that are lost due to  
14 theft. If a seller cannot determine whether a loss due to theft  
15 represents proceeds of retail or wholesale sales, or proceeds from  
16 business activities taxable under this chapter other than as a retail  
17 or wholesale sale, the seller may use the method of apportioning the  
18 loss in (a) of this subsection or other method of determining the  
19 deduction under this section as approved by the department before  
20 taking the deduction.

21 (a) If the amount of loss due to theft is known, or an estimate has  
22 been approved in advance by the department under (b) of this  
23 subsection, but the proper amount of the deduction under this section  
24 cannot be determined, the seller may apportion the loss to retail or  
25 wholesale sales as provided in this subsection (4)(a). The department  
26 may adjust the amount of loss apportioned under this subsection (4)(a)  
27 based on amended returns filed by the seller or based on the results of  
28 an audit of the seller by the department.

29 (i) The seller may determine the amount of the loss to apportion to  
30 retail sales by multiplying the loss by a fraction. The numerator of  
31 the fraction is the taxable amount reported under all retailing  
32 business and occupation tax classifications on the seller's excise tax  
33 returns for the calendar year immediately preceding the calendar year  
34 in which the theft occurred. The denominator of the fraction is the  
35 total taxable amount reported under all business and occupation tax  
36 classifications on the seller's excise tax returns for the calendar  
37 year immediately preceding the calendar year in which the theft  
38 occurred, less any amount for which a credit is allowed under RCW

1 82.04.440. For purposes of the numerator and denominator, if the  
2 seller was not engaged in business in the calendar year immediately  
3 preceding the theft, or if the seller is required to file returns more  
4 frequently than annually, the seller may use the taxable amounts on its  
5 returns covering the most recent twelve-month period ending with the  
6 reporting period immediately preceding the reporting period in which  
7 the theft occurred. If twelve months of return data is not available,  
8 the seller shall use as many months of return data as is available.

9 (ii) The seller may determine the amount of the loss to apportion  
10 to wholesale sales by multiplying the loss by a fraction. The  
11 numerator of the fraction is the taxable amount reported under all  
12 wholesaling business and occupation tax classifications on the seller's  
13 excise tax returns for the calendar year immediately preceding the  
14 calendar year in which the theft occurred. The denominator of the  
15 fraction is the total taxable amount reported under all business and  
16 occupation tax classifications on the seller's excise tax returns for  
17 the calendar year immediately preceding the calendar year in which the  
18 theft occurred, less any amount for which a credit is allowed under RCW  
19 82.04.440. For purposes of the numerator and denominator, if the  
20 seller was not engaged in business in the calendar year immediately  
21 preceding the theft, or if the seller is required to file returns more  
22 frequently than annually, the seller may use the taxable amounts on its  
23 returns covering the most recent twelve-month period ending with the  
24 reporting period immediately preceding the reporting period in which  
25 the theft occurred. If twelve months of return data is not available,  
26 the seller shall use as many months of return data as is available.

27 (b) If the exact amount of proceeds lost due to theft cannot be  
28 precisely determined, the seller may estimate the amount of the loss.  
29 The estimated amount used for the purpose of this deduction must equal  
30 the amount indicated in the report made to law enforcement, and must be  
31 approved in advance by the department. The department may require  
32 additional information or documentation as it determines is necessary.

33 (5) For the purposes of this section, the following definitions  
34 apply:

35 (a) "Proceeds" means the gross proceeds of sales.

36 (b) "Taxable amount" means the gross amount subject to the tax  
37 imposed in this chapter required to be reported on the person's excise

1 tax returns, less any allowable deductions other than the deduction  
2 under this section.

3 NEW SECTION. **Sec. 2.** A new section is added to chapter 82.08 RCW  
4 to read as follows:

5 (1) A seller is entitled to a deduction from the measure of tax for  
6 the amount of any proceeds from a retail sale subject to tax under RCW  
7 82.08.020 that have been lost due to theft. The deduction is allowed  
8 only if the theft was by a person other than the seller, an immediate  
9 family or household member of the seller, an employee of the seller, or  
10 a person having a business or contractual relationship with the seller  
11 at the time of the theft. The maximum deduction allowable is five  
12 thousand dollars per theft.

13 (2) A deduction is allowed under this section only to the extent  
14 that the loss is not covered by insurance or otherwise recovered.  
15 Proceeds subsequently recovered in whole or in part and the tax thereon  
16 must be paid and reported on the return filed in the period in which  
17 the recovery is made.

18 (3) A seller must report the theft to the appropriate law  
19 enforcement agency and obtain a copy of such report, which shall be  
20 retained as supporting documentation for the deduction. The department  
21 may require additional information or documentation from the seller as  
22 it determines is necessary in order to verify the seller's right to a  
23 deduction under this section.

24 (4)(a) The deduction claimed under this section shall not exceed  
25 the amount of proceeds of retail sales subject to the tax under RCW  
26 82.08.020 that are lost due to theft. If a seller cannot determine  
27 whether a loss due to theft represents proceeds of a retail sale  
28 subject to the tax imposed by RCW 82.08.020, or proceeds from business  
29 activities not taxable as a retail sale, the seller may use the method  
30 of apportioning the loss in (b) of this subsection or other method of  
31 determining the deduction under this section as approved by the  
32 department before taking the deduction. The department may adjust the  
33 amount of loss apportioned under (b) of this subsection based on  
34 amended returns filed by the seller or based on the results of an audit  
35 of the seller by the department.

36 (b)(i) If the amount of loss due to theft is known, or an estimate  
37 has been approved in advance by the department under (b)(ii) of this

1 subsection, but the proper amount of the deduction under this section  
2 cannot be determined, the seller may apportion the loss to retail sales  
3 subject to tax under RCW 82.08.020 as provided in section 1(4)(a)(i) of  
4 this act.

5 (ii) If the proceeds lost due to theft represent retail sales and  
6 the local sales taxes imposed on such sales are sourced to more than  
7 one local taxing authority, the seller shall estimate the amount of the  
8 loss. The estimated amount used for the purpose of this deduction must  
9 equal the amount indicated in the report made to law enforcement, and  
10 must be approved in advance by the department. The department may  
11 require additional information or documentation as it determines is  
12 necessary.

13 (5) For the purposes of this section, "proceeds" has the same  
14 meaning as "selling price" in RCW 82.08.010.

15 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.12 RCW  
16 to read as follows:

17 (1) A retailer required by RCW 82.12.040 to collect the tax imposed  
18 by this chapter is entitled to a credit for use tax proceeds from a  
19 transaction for which the tax imposed by this chapter was collected and  
20 that have been lost due to theft. The credit is allowed only if the  
21 theft was by a person other than the retailer, an immediate family or  
22 household member of the retailer, an employee of the retailer, or a  
23 person having a business or contractual relationship with the retailer  
24 at the time of the theft. The maximum credit allowable is four hundred  
25 fifty dollars per theft.

26 (2) A credit may be claimed under this section only to the extent  
27 that the loss is not covered by insurance or otherwise recovered.  
28 Proceeds subsequently recovered in whole or in part must be paid and  
29 reported on the return filed in the period in which the recovery is  
30 made.

31 (3) A retailer must report the theft to the appropriate law  
32 enforcement agency and obtain a copy of such report, which shall be  
33 retained as supporting documentation for the credit. The department  
34 may require additional information or documentation from the retailer  
35 as it determines is necessary in order to verify the retailer's right  
36 to a credit under this section.

1 (4) The credit claimed under this section shall not exceed the  
2 amount of proceeds that are lost due to theft. If a retailer cannot  
3 determine whether a loss due to theft represents proceeds of  
4 transactions for which the tax imposed by this chapter was collected as  
5 required by RCW 82.12.040, or proceeds from other business activities,  
6 the seller may use the method of apportioning the loss in (a) of this  
7 subsection or other method of determining the credit under this section  
8 as approved by the department before claiming the credit. The  
9 department may adjust the amount of loss apportioned under (a) of this  
10 subsection based on amended returns filed by the seller or based on the  
11 results of an audit of the seller by the department.

12 (a)(i) If the amount of loss due to theft is known, or an estimate  
13 has been approved in advance by the department under (b) of this  
14 subsection, but the proper amount of the credit under this section  
15 cannot be determined, the retailer may apportion the loss to the use  
16 tax collected as provided in this subsection (4)(a).

17 (ii) The retailer may determine the amount of the loss to apportion  
18 to the use tax collected by multiplying the loss by a fraction. The  
19 numerator of the fraction is the total amount of state and local use  
20 tax collected by the retailer in the calendar year immediately  
21 preceding the calendar year in which the theft occurred. The  
22 denominator of the fraction is the total tax liability of the retailer  
23 reported on the retailer's excise tax returns for the calendar year  
24 immediately preceding the calendar year in which the theft occurred.  
25 For purposes of the numerator and denominator, if the retailer was not  
26 engaged in business in the calendar year immediately preceding the  
27 theft, or if the retailer is required to file returns more frequently  
28 than annually, the retailer may use data reported on its returns  
29 covering the most recent twelve-month period ending with the reporting  
30 period immediately preceding the reporting period in which the theft  
31 occurred. If twelve months of return data is not available, the  
32 retailer shall use as many months of return data as is available.

33 (b) If the exact amount of proceeds lost due to theft cannot be  
34 precisely determined, the retailer may estimate the amount of the loss.  
35 The estimated amount used for the purpose of this credit must equal the  
36 amount indicated in the report made to law enforcement, and must be  
37 approved in advance by the department. The department may require  
38 additional information or documentation as it determines is necessary.

1           (5) For the purposes of this section, "proceeds" means taxes  
2 imposed under this chapter and collected as required by RCW 82.12.040.

3           NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of the  
5 state government and its existing public institutions, and takes effect  
6 July 1, 2007.

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